

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations,)
(Scotland Neck and Pinetops,)
North Carolina))

MM Docket No. 92-7

RM-7879

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Federal Communications Commission
Office of the Secretary

To: Chief, Allocations Branch
Mass Media Bureau

COMMENTS OF RADIO TRIANGLE EAST COMPANY

Radio Triangle East Company ("RTE"), by its attorneys and pursuant to Section 1.420 of the Commission's Rules, hereby opposes the Mass Media Bureau's proposal to substitute FM Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, and to reallocate Channel 238C3 from Scotland Neck to Pinetops, North Carolina. See Scotland Neck and Pinetops, North Carolina, DA 92-51 (Alloc. Branch, released January 22, 1992) ("NPRM"). RTE is the licensee of FM station WSAY-FM, Rocky Mount, North Carolina. The city of Rocky Mount is within the 1 mV/m contour of a Class C3 station operating at the coordinates specified in the NPRM for the Pinetops facility.

As explained below, the reallocation of the subject channel, which is authorized to petitioner WYAL Radio, Inc. ("WYAL"), permittee of Station WWRT(FM) at Scotland Neck, would result in the reallocation of a channel from a rural community

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to one that is designed to provide service to an urbanized area. Under these circumstances, where the proposed relocation appears intended solely to enable the petitioner to serve an urbanized area, Pinetops must be credited with all the aural services licensed to that urbanized area (Rocky Mount, North Carolina). When this is done, it is clear that the change in community proposed in the NPRM, which would leave Scotland Neck with no local nighttime aural service, would not result in a preferential arrangement of allotments. As a result, the proposed upgrade and concomitant reallocation of Channel 238A from Scotland Neck to Pinetops must be denied.

I. The Community Change Proposal Is Designed To Enable Petitioner To Serve An Urbanized Area.

In its NPRM, the Bureau tentatively determined that the public interest would be served by approval of the Scotland Neck/Pinetops proposal, since it could provide Pinetops with its first local aural transmission service and allow station WWRT to expand its coverage area. NPRM, DA 92-51, slip op. at 1. The Bureau stated specifically that "the reallocation of Channel 238C3 to Pinetops will not deprive Scotland Neck of its sole local aural transmission service or result in the reallocation of a channel from a rural community to one within an urbanized area." Id.

Although the Bureau is correct in its statement that Pinetops, North Carolina is not located "within" an urbanized area, the fact remains that the "usable area" identified by WYAL for the transmitter site for "Pinetops" station WWRT on Channel 238C3 is very close to the Rocky Mount, North Carolina Urbanized Area. See WYAL Petition at Exhibit B, Exhibit No. 1. A Class C3 station transmitting from the reference coordinates selected by WYAL would clearly provide city-grade service to all of Rocky Mount.

Scotland Neck, a community with a 1990 U.S. Census population of 2,575 persons, is not within the Rocky Mount Urbanized Area, and thus is a rural community. WYAL has acknowledged that Scotland Neck would not receive a city-grade signal from the proposed "Pinetops" facility. WYAL Petition, Exhibit B at 2. As a result, the proposal to relocate station WWRT(FM) from Scotland Neck to Pinetops, would, in effect, constitute the reallocation of a channel from a rural community to an Urbanized Area.

II. The Petitioner Has Failed To Demonstrate That Pinetops Is Sufficiently Independent From Rocky Mount To Merit A First Local Service Preference.

The fact that the proposed "Pinetops" facility would be located very close to the Rocky Mount Urbanized Area has a profound impact on the Bureau's analysis of the proposal presented in the NPRM. Indeed, it precludes the Bureau from

granting the community of license change aspect of the NPRM. Since petitioner has acknowledged that the allocation of Channel 283C3 to Scotland Neck would be inconsistent with the Commission's minimum distance separation requirements (see WYAL Petition, Exhibit B at 2), the channel upgrade aspect of the NPRM must be denied as well.

In response to fears that licensees will manipulate the Commission's allotment policies by claiming preferences for suburban communities that have no local services (but that receive multiple aural services from the nearby large community), the Commission has limited the ability of licensees to utilize Section 1.420(i) of the Commission's Rules (the community of license change rule), to relocate stations from rural to urban areas. In situations where a petitioner proposes to relocate a station from a rural to an urbanized area, the Commission will examine evidence adduced pursuant to several well-articulated factors in order to determine whether the suburban community should be denied a first local service preference. Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096-97 (1990) ("Community Change Reconsideration Order").

Factors relevant to the Commission's analysis include the degree to which the proposed facility could cover the adjacent urban area; the size of the suburban community

relative to an adjacent city and whether the suburban community is within the urbanized area of the city; and whether the suburban community exhibits a high degree of interdependence with the larger community. The Commission stated that if, after reviewing its list of factors,

we were to conclude that awarding a first local service preference to the proposed allotment in the urban area would appear to condone an artificial and unwarranted manipulation of the Commission's policies, no such preference would be awarded. Instead, the allotment would be considered as simply an additional to the urban area.

Id. at 7097 & n.14 (citing RKO General (KERC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988)). The Commission went on to state that, in circumstances where the proposed suburban community is denied a first local service preference, the "[r]etention of sole local service in the rural community would be preferred, since a first local service is generally a higher priority than an additional allotment to a community that already enjoys local service." Community Change Reconsideration Order, 5 FCC Rcd at 7097.

Here, WYAL has completely avoided the question whether Pinetops is entitled to a first local service preference. WYAL's petition for rule making was filed on December 13, 1991, a mere five weeks before the release of the NPRM. Despite the fact that the results of the 1990 U.S. Census had been

available for some time before its petition was filed, WYAL elected to rely on data from the 1980 U.S. Census -- data that do not reflect the subsequent designation of Rocky Mount as an urbanized area. See WYAL Petition for Rule Making at 4 and Exhibit B at p.2.

Whatever WYAL's motivation in relying on stale data, the fact remains that WYAL has not made the showing necessary to prove the independence of Pinetops from Rocky Mount. In this regard, RTE observes that the usable area for a "Pinetops" Channel 238C3 station is located very close to the city limits of Rocky Mount, thereby ensuring that the "Pinetops" facility would cover all of Rocky Mount. See WYAL Petition at Exhibit B, Exhibit No. 1.

Moreover, the pagination on the excerpt of a telephone book WYAL attached to its petition makes clear that listings for Pinetops are included as part of a larger directory; the second page of the alphabetical listings for Pinetops is numbered "183." Id. at Exhibit A, p.2. In Faye and Richard Tuck, supra, the Commission stated that whether the smaller community has its own telephone book provided by the local telephone company is one of the factors the Commission will consider in assessing the independence of the smaller community from the urban area. 3 FCC Rcd at 5378.

It thus appears that not only did WYAL fail to make any affirmative showing to support its claim for a first local

service preference for Pinetops, its own petition for rule making contains indications that Pinetops fails two of the three independence criteria recited in the Community Change Reconsideration Order. The great disparity between the populations of Rocky Mount (48,997) and Pinetops (1,514), combined with the fact that the "Pinetops" station transmitter would be located very close to the Rocky Mount Urbanized Area confirms that Pinetops fails the third criteria as well.

Under these circumstances, the Bureau should determine that WYAL is not entitled to a first local service preference for its proposal to relocate station WWRT(FM) from Scotland Neck to Pinetops. It should proceed instead to evaluate the proposal as if WYAL sought to relocate its station from Scotland Neck to Rocky Mount.

III. The Proposed Relocation Of Station WWRT(FM) From Scotland Neck To Rocky Mount Would Not Result In A Preferential Arrangement Of Allotments.

Under the Commission's Community Change Reconsideration Order, the denial of a first local service preference to Pinetops requires the treatment of the WYAL proposal as a relocation from Scotland Neck to Rocky Mount. Community Change Reconsideration Order, 5 FCC Rcd at 7097. Scotland Neck, with its 1990 U.S. Census population of 2,575 persons, has two local aural facilities authorized to it:

Station WWRT(FM), and a daytime-only AM radio station, WYAL(AM), that is also licensed to WYAL. According to the 1991 Broadcasting Yearbook and Section 73.202(b) of the Commission's Rules, Rocky Mount, which has a 1990 U.S. Census population of 48,997, has three commercial FM stations, one noncommercial educational FM station, and three AM stations either licensed or authorized. See 1991 Broadcasting Yearbook, at B-242, B-243; 47 C.F.R. § 73.202(b).

In a comparison between Scotland Neck and Rocky Mount pursuant to the Commission's allotment criteria, Scotland Neck is the clear winner. WWRT(FM) would provide Scotland Neck with its first full-time local service, whereas Rocky Mount is the community of license for at least five full-time aural facilities. Moreover, WWRT(FM) represents Scotland Neck's only local FM service, while Rocky Mount has three commercial FM services licensed to it. Scotland Neck thus would prevail over Rocky Mount under the "first local service" criterion in Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88 (1982).

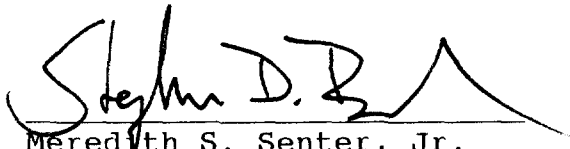
In short, there can be no doubt that the Bureau's proposal to grant WYAL's petition for rule making by relocating Scotland Neck's only full-time aural service away from the community would not result in a preferential arrangement of allotments. The proposal advanced in the NPRM must therefore be denied as inconsistent with Section 1.420(i) of the Commission's Rules.

IV. Conclusion

On the basis of the foregoing discussion, RTE urges the Bureau to deny the proposed community of license change and channel upgrade that were proposed in WYAL's petition for rule making and advanced in the NPRM. Because an upgrade of Station WWRT(FM)'s construction permit to Channel 238C3 at Scotland Neck would not comply with the Commission's spacing requirements, both the upgrade and community of license change components of WYAL's petition must be rejected.

Respectfully submitted,

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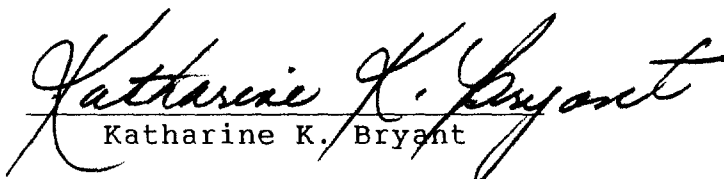
March 16, 1992

Its Attorneys

CERTIFICATE OF SERVICE

I, Katharine K. Bryant, do hereby certify that a copy of the foregoing "Comments of Radio Triangle East Company" was mailed, United States first-class postage prepaid, this 16th day of March 1992 to the following:

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